

## ROUTT COUNTY PLANNING COMMISSION

### MINUTES

APRIL 5, 2018

The regular meeting of the Routt County Planning Commission was called to order at 6:00 p.m. with the following members present: Chairman Steve Warnke and Commissioners Troy Brookshire, Geoff Petis, Andrew Benjamin, Roberta Marshall, Peter Flint and John Merrill. Commissioners Bill Norris, Brian Arel, Paul Hebert and Karl Koehler were absent. Planning Director Chad Phillips and staff planners Alan Goldich, Chris Brookshire and Jillian Ferguson also attended. Sarah Katherman recorded the meeting and prepared the minutes.

#### PUBLIC COMMENT

There was no public comment.

#### MINUTES – February 15, 2018

Commissioner Merrill moved to approve the minutes of the February 15, 2018 Routt County Planning Commission meeting, as written. Commissioner Benjamin seconded the motion. **The motion carried 7 – 0.**

**ACTIVITY:** PL-18-105

**PETITIONER:** Artine G. Yapoujian

**PETITION:** 1) Consolidation of three lots to create one parcel  
2) Rezone from High Density Residential (HDR) to Mountain Residential Estates (MRE)

**LOCATION:** MF Tracts 20, 33 & 34 South Shore at Stagecoach

Commissioner Brookshire disclosed that the staff planner on this item is his wife. He said that he had not discussed the matter with her and had received no information regarding the petition other than what was included in the staff report. Planning Commission had no concerns with Commissioner Brookshire's participation in the hearing.

Mr. Tom Effinger, a surveyor representing the petitioner, reviewed the request to consolidate three lots in Stagecoach into a single parcel. He said that the parcel is served by a good road and that the owner plans to drill a water well. He said that the easements would not have an impact on the owner's plans, so there was no need to vacate them.

Ms. Brookshire stated that the request is a fairly standard lot consolidation request. She confirmed that there had been no request to vacate the existing easements. She noted the topic of discussion regarding conformance with the Stagecoach Community Plan.

Chairman Warnke asked for a clarification regarding the dedication of Navajo Trail. Ms. Brookshire stated that the road had been dedicated, but that it had not been accepted for maintenance. If the property owners would like this road to be maintained by the County, it would have to be improved to County standards. She referred to the letter submitted by Mike Mordi of Routt County Road & Bridge Department. Ms. Brookshire noted that this policy is standard throughout Routt County.

Regarding the Stagecoach Community Plan, Mr. Phillips clarified that the Future Land Use map does not show this area as proposed for lot consolidations. He stated, however, that the Plan contains elements that support consolidations of lots without infrastructure, as cited in the staff report. These lots are not served by water and sewer services. Mr. Phillips noted the suggested findings of fact included on page 9 of the staff report. He stated that it is up to Planning Commission to determine if this lot consolidation is supported by the Stagecoach Community Plan.

There was no public comment.

Commissioner Petis cited Section 6.3.2 of the Stagecoach Community Plan, which encourages lot consolidations to meet the five-acre requirement. He stated that the consolidation is supported by the Plan. The rest of Planning Commission agreed.

In response to a question from Commissioner Marshall, Ms. Brookshire stated that whether the road is improved to maintenance standards would be up to the property owners. She noted that core samples of the roadway may be needed to determine what would be required to improve the road to the County standard. This issue will be addressed prior to filing the plat.

#### **MOTION**

Commissioner Petis moved to recommend approval of the proposed lot consolidation with the following findings for fact:

1. The proposal with the following conditions complies with the applicable guidelines of the Routt County Master Plan and Stagecoach Community Plan and is in compliance with Sections 4, 5, and 6 of the Routt County Zoning Regulations, Sections 3 and 4 of the Routt County Subdivision Regulations.
2. Even though the Stagecoach Future Land Use Map does not depict consolidations in South Shore, the Stagecoach Community Plan supports consolidations on land without infrastructure.

This approval is subject to the following conditions:

1. The Final Plat shall be finalized and recorded within one (1) year unless an extension is granted pursuant to Section 2.1.6, Routt County Subdivision Regulations. Extensions to up to one (1) year may be approved administratively.
2. Prior to recordation, the applicant shall submit an electronic copy of the approved plat to the County Planning Department in a .DWG format or other format acceptable to the GIS Department.
3. Prior to recordation all fees must be paid in full.
4. All property taxes must be paid prior to the recording of the plat.
5. The right of way for Navajo Trail shall be appropriately dedicated on the final plat.
6. The following notes shall be shown on the plat:
  - a. Routt County is not responsible for maintaining or improving subdivision roads. The roads shown hereon have not been dedicated nor accepted by the County.
  - b. The suitability of these lots for an individual septic disposal system and the availability of permits for individual septic disposal systems have not been established and such shall be a condition of obtaining a building permit for these lots.

- c. Existing and new accesses shall meet access standards set forth by the Routt County Road and Bridge Department and Fire Prevention Services.
  - d. The availability of water and permits for wells on the lots or parcels hereon shown has not been established.
  - e. Routt County (County) and the South Routt Fire District (District) shall be held harmless from any injury, damage, or claim that may be made against the County or the District by reason of the County's or the District's failure to provide ambulance, fire, rescue or police protection to the property described on this plat, provided that the failure to provide such services is due to inaccessibility of the property by reason of internal roads being impassable. This conditions shall not relieve the County or the District of their responsibility to make a bona fide effort to provide emergency services should the need arise.
7. Address signage shall be in conformance with Routt County Road Addressing, Naming, and Signing Policy shall be located at the entrance to the driveway.
  8. A current soils test showing that the soils are sufficiently stable to support development will be required before obtaining a building permit.
  9. Revegetation of disturbed areas shall occur within one growing season with a seed mix that avoids the use of aggressive grassed. See the Colorado State University Extension Office for appropriate grass mixes.
  10. All exterior lighting shall be downcast and opaquely shielded.
  11. A 'no build' zone shall be indicated on the plat to avoid construction of structures, septic fields and roads in areas including, but not limited to 30% or greater slopes. The "no build" zones shall be defined on the plat and approved by the Planning Director before the plat is recorded.
  12. A fee in lieu for the Steamboat Lake and Stagecoach Replats was established in May, 2007. The fee is \$1,400 and shall be paid prior to the recording of the Final Plat.
  13. A Subdivision Improvements Agreement for the development of Navajo Trail must be completed prior to recording of the final plat, if applicable.

Commissioner Flint seconded the motion.

**The motion carried 7 – 0, with the Chair voting yes.**

#### **MOTION**

Commissioner Petis moved to recommend approval of the zone change from HDR to MRE with the finding of fact that the proposal with the following conditions meets the applicable guidelines of the Routt County Master Plan and applicable Sub Area plan and is in compliance with the applicable provisions of Sections 8 of the Routt County Zoning Regulations. This approval is subject to the following conditions:

1. The change of zone from High Density Residential (HDR) to Mountain Residential Estates (MRE) shall become effective upon signing of a resolution amending the Official Zoning Map by the Board of County Commissioners, said resolution to be recorded in the Routt County Clerk and Records Office.
2. The zone change is contingent upon a Final Plat being recorded.
3. The approval shall not be issued until all fees have been paid in full. Failure to pay fees may result in revocation of this approval.

Commissioner Benjamin seconded the motion.

The motion carried 7 – 0, with the Chair voting yes.

**ACTIVITY:** PL-18-113

**PETITIONER:** John C. and Reba A. Dobell & Linda R. Foss

**PETITION:** Vacation of portions of 1<sup>st</sup> Ave. and the Block 11 alleyway

**LOCATION:** Located on the south side of Milner, south of Block 11

Commissioner Brookshire disclosed that the staff planner on this item is his wife. He said that he had not discussed the matter with her and had received no information regarding the petition other than what was included in the staff report. Planning Commission had no concerns with Commissioner Brookshire's participation in the hearing.

Mr. Bear Ackerman of Emerald Mountain Surveys, representing the petitioners, reviewed the petition to vacate the remaining portions of 1<sup>st</sup> Avenue in Milner. He referred to the map included in the staff report. He noted that the western portion of the vacated land would revert to Ms. Foss and the eastern portion would revert to the Dobells, in conformance with Colorado statute. Mr. Ackerman indicated the easement for the sewer line. This easement will be left undisturbed, as will the Camilletti ditch that runs through the property. Mr. Ackerman stated that in discussions with Yampa Valley Electric (YVEA) it has been determined that following the vacation, the property owners will convey an easement to YVEA for the power line and associated pole.

In response to a question from Chairman Warnke, Mr. Ackerman referred to the aerial map of the property to indicate the location of Ms. Foss' trailer park.

Ms. Brookshire stated that Environmental Health Director Scott Cowman had submitted an email stating that he had no concerns regarding the proposed vacation. She stated that he had clarified that wastewater taps are still available in Milner, and that if a structure is built on parcel A, the owner would need to apply for a tap as well as for a well permit. Ms. Brookshire stated that Mr. Camilletti had expressed concern with development in the area of the ditch, although he had no objections to the vacation. She noted that this is the last portion of 1<sup>st</sup> Avenue to be vacated.

Commissioner Brookshire asked if it would be appropriate to create an easement for the ditch. Ms. Brookshire stated that she would look into what had been done on the previous vacations of 1<sup>st</sup> Avenue along the ditch. Mr. Ackerman noted that the steep slopes would preclude building near the ditch.

In response to a question from Mr. Phillips, Mr. Ackerman stated that the power pole is not in the middle of the alley. He reviewed the easement to be conveyed to YVEA for maintenance of the pole and the power line. Mr. Phillips noted that suggested condition #3 is not needed.

There was no public comment.

#### **MOTION**

Commissioner Benjamin recommended approval of the vacation of the remainder of 1<sup>st</sup> Avenue in Milner with the following findings of fact:

1. The proposal with the following conditions complies Sections 4, 5, and 6 of the Routt County Zoning Regulations, Sections 2 of the Routt County Subdivision Regulations.
2. The proposal meets the substantive standards as provided under Colorado Revised Statutes Section 43-2-303.
3. The proposal does not “landlock” any parcel or eliminate an access the public road system.

This approval is subject to the following conditions:

1. The resolution of vacation, which includes a legal description of the right-of-way being vacated, shall be recorded in the official records of the Routt County Clerk and Recorder within one year of the Board of County Commissioners approval.
2. Utility and drainage easements shall be show on an attached exhibit on the resolution of vacation.
3. Easement for utilities, sewer line and irrigation ditch shall remain and shall be described in the resolution or attached exhibit.

Commissioner Marshall seconded the motion.

**The motion carried 7 – 0, with the Chair voting yes.**

**ACTIVITY: PL-18-106**  
**PETITIONER: BookTrails**  
**PETITION: Special Use Permit for a Recreational Facility with overnight accommodations**  
**LOCATION: Hahn’s Peak Ranch, 61325 RC 62, Clark, CO 80428**

Ms. Emily Osterman, Director of BookTrails, described the BookTrails organization, a non-profit that offers reading and writing enrichment camps on ranches in Routt County. She stated that the programs provide outdoor education and experiences in addition to reading instruction and enrichment. Ms. Osterman described the site of the Reading Ranch, a 2-acre portion inside the Hahn’s Peak Ranch that was the site of the Burnett homestead. She reviewed the plans for an intentionally off-grid camp that would allow for week-long camps during the summer and occasional weekend events in the fall. Mr. Osterman noted that 1/3 of the children attending the camps are from low-income families attending the camp on scholarships and 30 – 40 kids per summer are English language learners.

Ms. Osterman described the three phases of the plan for developing the ranch. Phase 1 involved clean-up of the site and fencing. Phase 2 included the construction of 4 raised platforms for sleeping tents and a yurt. Ms. Osterman noted that the site has been served by porta-potties in the past, but that they are researching composting toilets for the site. She stated that Phase 3 includes the construction of three additional platforms for additional sleeping tents, a kitchen/dining hall building and the provision for indoor seating for all students. She said that the planned improvements would increase the capacity of the camp. She presented a map of the complete plan for the camp. She noted that no electronics are allowed at the camps, and that the programs include instruction regarding the eco-systems of the area, respect for the outdoors, the history and

culture of ranching, ranch operations, independence and off-grid sustainability. Ms. Osterman stated that since submitting the application, a decision was made to proceed with phase 3, so the number of raised platforms being requested should be 7, not 4 as listed on page 2 of the staff report and in suggested Specific Condition #2. She also requested a modification to the hours of operation to allow for occasional weekend events in the fall, while remaining within the total number of students specified in the project plan.

Commissioner Brookshire asked about wildfire mitigation at the camp. Ms. Osterman stated that BookTrails had obtained a permit for the fire ring, and that extensive brush clearing and fuel reduction had been completed. She said that there are fire extinguishers in each structure and at the fire pit, along with 5-gallon buckets of water at each tent. The structures and campsite have all been inspected and approved by the North Routt Fire Protection District.

In response to a question from Commissioner Petis, Ms. Osterman said that the proposed dining hall would be served by solar panels to provide electricity for the refrigerator and water pump.

Commissioner Marshall asked about the rehabilitation of the homestead building by an Eagle Scout. Ms. Osterman said that this project was on hold for the time being due to questions about the structural integrity of the building.

Ms. Ferguson stated that a memorandum of understanding had been executed between Booktrails and the landowners regarding the use of the larger ranch surrounding the camp area for hiking and exploration. She presented the plans for the kitchen/dining hall.

Ms. Ferguson stated that Commissioner Brookshire had asked about the culvert that crosses Larsen Creek on the access road to the camp. Ms. Ferguson stated that the culvert had been installed for agricultural purposes, so was exempt from the Waterbody Setback Regulations.

In response to a question from Commissioner Brookshire, Ms. Ferguson presented an aerial map of the property and reviewed the conservation easement on the ranch that includes a reserved building site on the site of the Reading Ranch.

Chairman Warnke asked about the permit for temporary structures issued by the Building Department. Ms. Ferguson said she did not know how long the structures were allowed to remain in place under this permit. Mr. Todd Peterson, the Chairman of the BookTrails Board of Directors, stated that he had met with the Building Department and Ms. Ferguson regarding the raised platforms. He said that the Building Department had outlined the requirements for the temporary structure permits, including drawings, anchors, and ADA-compliant access ramps. He noted that the temporary structure permit is needed because the site would not be used year-round. He added that the platforms are essentially mobile. They are considered not permanent structures by the Building Department. Mr. Phillips noted General Condition #5.

### **Public Comment**

Mr. Jay Fetcher, whose family owns the Hahn's Peak Ranch, reviewed the history of the ranch, noting that the BookTrails camp is on the site of the Burnett homestead. The homestead structure that remains was the barn. He stated that the site was rehabilitated and used by the Boy Scout troop in the 1970's and by several other groups over the years, both in summer and in winter. Mr.

Fetcher said that he did not want the BookTrails campers to be limited to the 2-acre site, which is why the entire ranch is included in the permit boundary. Mr. Fetcher reviewed the conservation easement on the ranch, which includes two reserved building sites. One of those sites is the BookTrails camp site. Mr. Fetcher said that in the event the ranch were sold, BookTrails would have to move, so all of the structures for the camp – including the dining hall building – will be on skids. No permanent structures will be built. Regarding the issue of fire raised by Commissioner Brookshire, Mr. Fetcher stated that the area had been extensively logged and cleaned up due to beetle kill. He added that there are two ways out of the BookTrails site.

Mr. Todd Peterson, Chairman of the BookTrails Board, stated that he had originally become involved with the BookTrails organization through his daughters, who are avid BookTrails camp attendees. He described the great experiences his kids have had at BookTrails camps. He stated that he strongly supports the proposal and encouraged Planning Commission to approve the SUP.

Ms. Chris Anderson, a BookTrails Board member, stated her support for the petition. She noted that conjunction at the camps of reading and the outdoors. She described the camp experience and noted that many of the kids who attend the camp would never otherwise get to experience the outdoors.

Seeing no further public comment, Chairman Warnke closed public comment.

Commissioner Brookshire asked about the condition of the road to the site. Mr. Fetcher stated that the road remains rough, but is a work in progress.

Commissioner Benjamin noted that suggested Specific Condition #1 allows for the permit to be valid for life of use. Commissioner Brookshire offered that an alternative could be a ten year permit to be renewed administratively. Chairman Warnke offered that there are sufficient conditions that would trigger review that a life-of-use permit is appropriate for this use. Planning Commission agreed. Commissioner Flint commended the landowners for sharing the ranch and giving back to the community. Commissioner Marshall also commended the program.

## **MOTION**

Commissioner Petis moved to recommend approval of the Special Use Permit for the BookTrails Reading Ranch with the findings of fact that the proposal, with the following conditions, meets the applicable guidelines of the Routt County Master Plan and is in compliance with Sections 4, 5, 6 of the Routt County Zoning Regulations.

**CONDITIONS** that may be appropriate may include the following:

### **General Conditions:**

1. The SUP is contingent upon compliance with the applicable provisions of the Routt County Zoning Regulations including but not limited to Sections 5, 6.
2. Any complaints or concerns that may arise from this operation may be cause for review of the SUP, at any time, and amendment or addition of conditions, or revocation of the permit if necessary.

3. In the event that Routt County commences an action to enforce or interpret this SUP, the substantially prevailing party shall be entitled to recover its costs in such action including, without limitation, attorney fees.
4. No junk, trash, or inoperative vehicles shall be stored on the property.
5. This approval is contingent upon the acquisition of and compliance with any required federal, state and local permits. The operation shall comply with all federal, state and local laws. Copies of permits or letters of approval shall be submitted to the Routt County Planning Department prior to the commencement of operations.
6. Fuel, flammable materials, or hazardous materials shall be kept in a safe area and shall be stored in accordance with state and local environmental requirements.
7. All exterior lighting shall be downcast and opaquely shielded.
8. Prior to the issuance of the permit, the Permittee shall provide evidence of liability insurance in the amount of no less than \$1,000,000 per occurrence. Routt County shall be named as an additional insured on the policy. Permittee shall notify Routt County Planning Department of any claims made against the policy. Certificate of liability insurance shall include all permit numbers associated with the activity.
9. Accessory structures/uses associated with this permit may be administratively approved by the Planning Director, without notice.
10. The permit shall not be issued until all fees have been paid in full. Failure to pay fees may result in revocation of this permit. Permits/Approvals that require an ongoing review will be assessed an Annual Fee. Additional fees for mitigation monitoring will be charged on an hourly basis for staff time required to review and/or implement conditions of approval.
11. Transfer of this SUP may occur only after a statement has been filed with the Planning Director by the transferee guaranteeing that they will comply with the terms and conditions of the permit. If transferee is not the landowner of the permitted area, transferee shall submit written consent for the transfer by the landowner. Failure to receive approval for the transfer shall constitute sufficient cause for revocation of the permit if the subject property is transferred. Insurance certificates required in the permit shall also be filed with the Planning Director by the transferee to assure the work will be completed as specified. Any proposal to change the terms and conditions of a permit shall require a new permit.
12. The Permittee shall prevent the spread of weeds to surrounding lands, and comply with the Colorado Noxious Weed Act as amended in 2013 and Routt County noxious weed management plan.
13. Revegetation of disturbed areas shall occur within one growing season with a seed mix that avoids the use of aggressive grasses. See the Colorado State University Extension Office for appropriate grass seed mixes.

**Specific Conditions:**

1. The Special Use Permit (SUP) is valid for the life of the use provided it is acted upon within one year of approval. The SUP shall be deemed to have automatically lapsed if the uses permitted herein are discontinued for a period of one (1).

2. The SUP is limited to uses and facilities presented in the approved plan. Any additional uses or facilities must be applied for in a new or amended application, The approved plan consists of:
  - 1) *Seven (7) 16'x28' composite platforms*
  - 2) *Six (6) sleeping tents*
  - 3) *One (1) kitchen yurt*
  - 4) *One (1) water tank, plus one additional larger water tank for future use*
  - 5) *One (1) sink platform*
  - 6) *Two (2) composting toilets*
  - 7) *600 square foot Dining Hall/Kitchen Building*
  - 8) *Restoration of a historic cabin on site into a working library*
3. Hours of operations shall be 24 hours/day, seven days per week, June 1<sup>st</sup> – August 20<sup>th</sup> and sporadically from August 20<sup>th</sup> – October 1<sup>st</sup>.
4. The operation shall include employees who are first aid certified and be trained on emergency procedures. Radios or cell phones shall be provided to staff in case of emergency.
5. Any accidents involving emergency services shall be reported to the Planning Department.
6. All trash shall be stored in either a garage or inside Interagency Grizzly Bear Committee (IGBC) certified receptacles.
7. Any amendments to the state permit shall be submitted to the County and may be cause for review of the permit.
8. Any required permits from the Building Department shall be obtained and any inspections completed before operations commence.

Commissioner Benjamin seconded the motion.

### Discussion

Commissioner Brookshire noted that under the proposed project plan, the camp would host 2800 user days per year on 658 acres. He offered that this intensity of use could be used for comparison in future intensity of use discussion.

**The motion carried 7 – 0, with the Chair voting yes.**

**ACTIVITY: PL-18-101**  
**PETITIONER: Routt County**  
**PETITION: Worksession on amendments to the Zoning and Subdivision Regulations**  
**LOCATION: County-wide**

Mr. Goldich reviewed the proposed housekeeping amendments included in the memo dated April 5, 2018. He noted that Planning Commission had discussed these items on February 15<sup>th</sup> and the Board of County Commissioners had discussed them on March 27<sup>th</sup>. He stated that two items had been earmarked for follow-up discussion.

Mr. Goldich reviewed the proposal to replace "profit" with "cost of development" in the Board of Adjustment standards for granting or denying a variance request. He reviewed that "profit" in cases of variances does not actually refer to making money. He said that staff had consulted with the County Attorney, who had no concerns with the proposed change. He said that staff had asked specifically about the Manley case, which the County Attorney said did not have any bearing on the proposed change. Mr. Goldich stated that previously Planning Commission had recommended leaving in "profit" and adding "cost of development." He said that the Board prefers to eliminate "profit" and replace it with "cost of development."

Mr. Goldich said that the proposed Safety Training Facility discussion had been inadvertently left out of the Planning Commission materials for the February 15<sup>th</sup> meeting. He stated that the proposed use would be an entirely new line in the use chart. He described a site in southern Routt County that had been used by Eagle County as well as federal agencies for active training involving helicopters and live fire. He added that the Routt County Sheriff's Office had also done live fire training at a site on CR 56. Mr. Goldich stated that these types of trainings had previously been permitted as Special Events. Special Event Permits are issued administratively and are intended for events with no significant off-site impacts. Special Event Permits require no adjacent landowner notification. Both events previously cited prompted many questions and complaints, which prompted staff to consider bumping these types of trainings up to an SUP or CUP. Mr. Goldich said that the Board had stated its preference for using a CUP process.

Commissioner Merrill asked what types of public (rather than governmental) trainings would fall under this use. Mr. Goldich offered that concealed carry classes with live fire would qualify. Mr. Phillips added that there are other public trainings with live fire, citing "Babes with Bullets."

In response to a question from Chairman Warnke, Mr. Goldich said that the primary complaints had to do with noise. Mr. Phillips noted that the trainings involved hours of live round shooting with large caliber weapons.

In response to a question from Commissioner Brookshire, Mr. Goldich confirmed that if a CUP petition were denied by Planning Commission, it could be appealed to the Board. Planning Commission said that they were fine with processing these uses as CUPs.

Commissioner Brookshire asked about the existing rifle range. Mr. Phillips stated that it was permitted as a Recreational Facility, with other uses being considered accessory.

Mr. Goldich reviewed the other items listed in the memo, noting that they were identical to those discussed in February, with the exception of the Safety Training Facility. In response to question from Commissioner Brookshire, Mr. Goldich reviewed the change in road classifications by the Road & Bridge Department. He said that using the map would ensure that the same roads considered in the existing Skyline Regulations would continue to be considered.

**Public Comment**

Mr. Paul Hoffmann distributed packets of the minutes from the last nine Board of Adjustment hearings. He asked that these also be provided to the Board of County Commissioners for their review. He said that the point in reviewing these minutes was to determine if any of the approvals should have been denied, and whether any of the findings were inappropriate. He offered that the reason that regulations are changed is if problems have occurred as a result of the existing language. He suggested that it was staff's desire to change "profit" to "cost" and that staff often states that cost cannot be considered by the Board of Adjustment. Mr. Hoffmann noted that the regulations state that a decision cannot be based *solely* on cost – not that cost cannot be considered at all. He cited the instance of reusing an existing foundation, and noted that Board of Adjustment Chair Steve Moore had said that there was value in reusing the old foundation. He suggested that profit really is the issue and that cost *can* be considered. He said that if no past decisions merited change, there was no reason to change the language of the regulations. He suggested that Planning Commission table this item of the housekeeping changes.

In response to a question from Chairman Warnke, Mr. Goldich said that the proposed change was suggested by staff as a clarification. It did not originate with the Board of Adjustment. He stated that variances are based on physical constraints of the land, not on the cost of development or the presence of an existing structure. He said that it is staff's opinion that neither cost nor profit should be considered in variance decisions. Mr. Phillips noted that the proposed change is intended as a clarification, not to address past mistakes. He said that Board of Adjustment members often ask about the meaning of "profit."

Commissioner Benjamin agreed that neither cost nor profit should be considered in land use decisions. Commissioner Merrill said that "cost of development" achieves the intent of the regulations. Commissioner Brookshire offered that it shouldn't be up to Planning Commission to review the Board of Adjustment regulations. Commissioner Flint stated his support for the proposed change. Chairman Warnke said that Planning Commission seemed inclined to go with staff's recommendation.

**MOTION**

Commissioner Merrill moved to approve the amendments, as presented, with the exception of Section 3.4.6 ("profit" language for Board of Adjustment), which shall be tabled until staff is able to address the outstanding questions regarding the proposed change. Commissioner Brookshire seconded the motion.

**Discussion**

Commissioner Petis said that he was not sure about making changes to the Board of Adjustment regulations and suggested that more research was needed. He added that he would like more information as to why the change is needed. Commissioner Marshall stated her support for tabling this one item. Mr. Phillips suggested that at a future meeting Mr. Goldich and he could take Planning Commission through the Board of Adjustment process for clarification.

In response to a question from Commissioner Marshall, Mr. Phillips reviewed that if a structure is more than 50% destroyed, when it is rebuilt the new structure must meet current standards. He noted that in such instances, the structure was probably placed in its original location for a reason that can then be identified as a finding to allow a variance. Commissioner Flint asked if cost could

not be the basis for a hardship. Mr. Phillips stated that under the current interpretation of the State statute, it cannot. He said that he had discussed a possible sunset of the applicability of conformance with the requirements to structures of a particular age, but that the Board of County Commissioners had rejected this concept in favor of maintaining the zoning regulations.

Commissioner Petis proposed a friendly amendment to the motion to approve the housekeeping amendments as presented, with the exception of Section 3.4.6, which shall be tabled until such time that staff can address the above cited questions. The friendly amendment was accepted, as indicated above.

**The motion carried 7 – 0, with the Chair voting yes.**

**ACTIVITY:** PL-16-70  
**PETITIONER:** Routt County  
**PETITION:** Worksession on amendments to the Waterbody Setback Regulations  
**LOCATION:** County-wide

Mr. Goldich reviewed the changes that had been made to the draft, noting that the change to the definition of a waterbody to one that holds water continuously for 90 days, instead of 60 days, had been opposed by six of eight of the Planning Commissioners at the last hearing, but had been supported by two of the three County Commissioners. He said that Planning Commission could decide whether to support this change or recommended retaining the 60-day based definition.

Mr. Goldich reviewed that if staff deems impacts to be avoidable, the application would then be processed as an SUP with consideration given to mitigation and monitoring of the mitigation. He stated that the Board had supported five years of monitoring for mitigation, as well as bonding for the mitigation. Mr. Goldich added that the Board also wanted to add the temporary impacts of grading to the list that includes roads, bridges and culvers that are subject to mitigation measures. Mr. Goldich noted the email submitted by Jeff Lake that suggested adding the words, "impacts associated with grading" to Section 5.11.6.A.2). He stated that staff supports including this language. Mr. Goldich also noted that because the regulations would now provide the possibility of mitigation, staff is recommending adding "unless mitigated" to objective C in order to avoid a contradiction between the objectives and the regulations.

In response to a question from Commissioner Benjamin, there was a discussion of what impacts of grading would be considered temporary.

Commissioner Brookshire asked whether there would be a time limit on how long the CPW and staff would have to review mitigation as provided for in Section 5.11.6.A.2). Mr. Goldich responded that the review would follow the SUP regulations and would have to be complete by the next available hearing. Commissioner Brookshire asked who would do the monitoring and who would review it. Mr. Phillips said that staff, in conjunction with CPW, would conduct the monitoring. In the event that a problem is identified, the permit holder would be informed and given the opportunity to correct it. Mr. Goldich added that the mitigation measures would be bonded. The bonding would be held for a time period not to exceed five years.

Commissioner Brookshire asked why the narrative called for in 5.11.6.A.2) b. was needed. Mr. Goldich said that this is to ensure that alternative options have been considered. He said that CPW feels this is very important. It is similar to the NEPA process and is intended to ensure that the best option to achieve the goal of mitigation is chosen. Commissioner Brookshire asked about the criteria for mitigation. Mr. Goldich referred to Section 5.11.6.C.

### **Public Comment**

Mr. Ben Beall stated that he had attended most of the worksessions on this issue and that he is okay with most of the recommended revisions, except for the change to the definition of a waterbody. He offered that the change from 60 days to 90 days as proposed by the Board of County Commissioners is arbitrary. He cited the following reasons for retaining the 60-day definition:

1. Prior to the original definition being adopted, the Board of County Commissioners, Planning Commission and a group working on the project headed by then Environmental Health Director Mike Zopf reviewed the scientific evidence regarding the impact of intermittent streams on the watershed and based the definition on the best scientific information available.
2. In 20 years of using the same Waterbody Setback Regulations, Routt County has had population growth of almost 30%, with predications that the population will double from current levels in the next 20 years. Planning for water quality and quantity is essential. Routt County cannot reject the science of our rivers, streams and water.
3. The existing regulations have worked. There have only been two complaints over 20 years and these were dealt with effectively through the planning process. No complaints have been received regarding the importance of protecting intermittent streams.
4. Over the two-year review of the regulations, every knowledgeable expert that has commented on the proposed revisions, including the Routt County Environmental Health Director, has recommended retaining the 60-day flow definition in order to mitigate the cumulative erosion impact.

Mr. Beall reiterated that the proposed change to 90-days is an arbitrary decision. He encouraged Planning Commission to stand by its past decision to retain the 60-day flow definition.

In response to a question from Commissioner Flint, Mr. Beall stated that the 60-day definition is not arbitrary because it is based on a comprehensive review of the scientific opinions and evidence, and the advice of experts in the field, including the former and current Routt County Environmental Health Directors.

Mr. Jay Gallagher stated his agreement with all of Mr. Beall's comments. He said that Lyn Halliday, who could not attend tonight's meeting, had sent a letter regarding the proposed definition change. He read the letter into the record. The letter cited the scientific evidence and the opinions of the experts that had been consulted. Ms. Halliday urged Planning Commission to maintain the 60-days of flow definition.

Mr. Gallagher commended Planning Commission on its work in the review and revision of the Waterbody Setback Regulations. He stated that the process has been improved by providing a mitigation process that would address issues like the two previous complaints. Mr. Gallagher noted the many experts, public officials and private citizens that have weighed in on the importance of

protecting Routt County's water quality and quantity, particularly with a view to the projected population growth. Mr. Gallagher offered that it is likely that residential growth will continue to occur along the tributaries of the watershed. He stated that the intermittent streams that feed these tributaries play a crucial role in the health of the rivers and the watershed. He stated his support for retaining the 60-day flow definition of a waterbody.

Hearing no further comment, Chairman Warnke closed public comment.

Chairman Warnke suggested that the primary outstanding topic for discussion is the 60-day vs. 90-day definition. Commissioner Flint asked why the Board had proposed the 90-day definition. Mr. Goldich stated that when the idea of a sliding scale for the setback from intermittent streams was rejected by the public and Planning Commission, the Board, which was looking for a compromise that would allow for development near these tributaries, chose to change the definition of intermittent streams to 90-days.

Commissioner Flint offered that the proposed change is not in keeping with the Master Plan. He added that the Master Plan does not call for changing the regulations in order to encourage development.

Commissioner Petis agreed that there was no scientific basis for changing the definition to 90 days. He stated that in the minutes Board of County Commissioner meeting of February 5, 2018 there is no reference to the Master Plan. Commissioner Petis stated that while the experts in the field had recommended a case-by-case analysis, it was recognized that this would not be practical, and that the 60-day definition was the best alternative. He stated that the Board had not offered any evidence to the contrary. He stated that the proposed change to 90 days is arbitrary and capricious.

Commissioner Brookshire reviewed the aerial of the Hahn's Peak Ranch, and pointed out that if this property were sold, the buyer would not be able to use the existing two-track to access the designated development site at the Burnett homestead because it crosses Larsen Creek. Instead they would have to build an entirely new road through the meadow at great expense and probably do more damage by tearing up the meadow than they would by building a crossing over Larsen Creek. Commissioner Brookshire questioned the practicality and enforceability of the regulations and the efficacy of the mitigations. He stated that he was glad to hear that there is a timeline on the review process. He offered that it was onerous to make a property owner go through the proposed process and put up with the mitigation requirements and monitoring plan that are not specific and are not defined from the outset. He stated that he does not trust the CPW.

Mr. Phillips noted that the CPW takes cumulative impacts into account in its evaluation, so the more crossings there are on a stream, the more difficult they may become to mitigate. He stated that the CPW is looking for impacts on the whole system, not just on the individual property. Commissioner Brookshire said he had no idea how CPW evaluates cumulative impacts and that he could not support the proposed 5-year monitoring plan.

Chairman Warnke noted that the existing regulations, which have been in place for 20 years, have resulted in only two snags, both of which involved the lack of a provision for mitigation. He stated that the mitigation issue has been fixed with the proposed revisions. He offered that Routt County

is not in a position to fix the regulations such that they would meet Commissioner Brookshire's standards in every case. He suggested that it would be a good idea to implement the revised regulations and see how it goes. Chairman Warnke stated that it would impossible to come up with a set of regulations that will address every situation correctly and meet everyone's expectations. It is a very complex situation.

Mr. Phillips stated that the review process had begun with an evaluation of the objectives. He noted that there had been unanimous agreement regarding the objectives from Planning Commission and the Board. He stated that once a provision for mitigation was added to the regulations, "unless mitigated" was added to objective C to avoid a contradiction. He noted that there had been comments been about the "avoidability" language. He stated for the past 20 years, at the direction of the Board, staff has interpreted avoidability in a very strict way. If the Board would prefer that a less strict interpretation be used, they could direct staff to relax that interpretation – but have chosen not to do so.

Regarding the example of the Hahn's Peak Ranch cited by Commissioner Brookshire, Mr. Phillips stated that Section 5.11.6.A.1)c could be used to determine that crossing the meadow would be more detrimental than crossing Larsen Creek.

Commissioner Flint asked how the necessary mitigations could be made more transparent and predictable. Mr. Phillips stated that streams are unique and mitigations must be determined on a case-by-case basis. He offered that a sale of a property could be contingent upon an approval of an application for a waterbody crossing.

Commissioner Benjamin stated that the intent of the regulations is to preserve the water quality and quantity. He stated that the existing system of doing so has worked and that solutions can be and have been found – even for the two instances of disagreement due to the lack of a provision for mitigation. He stated that he could not support the change to the definition to 90-days.

Commissioner Merrill stated his support for retaining the 60-day definition and adding the language proposed by Jeff Lake regarding grading and excavation. Commissioners Marshall and Flint agreed.

Commissioner Brookshire stated his support for a 90-day definition, but stated that he did not support adding "unless mitigated" to objective C. He stated that this allows for arbitrary mitigation. He said that he could not support mitigation that was not clear or defined.

Mr. Phillips reiterated that the bigger picture and the potential impacts of alternatives can be taken into account. He again cited 5.11.6.A.1)c.

Commissioner Marshall asked if Commissioner Brookshire would be okay with language that stated that the required mitigation should be commensurate with the impacts. Commissioner Brookshire stated that he would. There was a discussion of what "commensurate" would look like and whether it was appropriate to set a single standard. Following discussion it was decided that a more case-by-case process for determining mitigation was more appropriate and flexible.

## **MOTION**

Commissioner Petis moved to recommend approval of the Waterbody Setback Regulations, as presented, with the exception that the definition of intermittent stream should remain at 60-days of continuous flow; and with the addition of "temporary impacts associated with grading and excavation" to Section 5.11.6.A.2).

Commissioner Merrill seconded the motion.

**The motion carried 6 – 1, with the Chair voting yes.**

In explanation of his dissent, Commissioner Brookshire stated that the proposed mitigation is vague and arbitrary, and that he supports the 90-day definition instead of the 60-day definition.

#### **ADMINISTRATOR'S REPORT**

Mr. Phillips reviewed the upcoming agendas, including the vote on the Chair and Vice-chair of Planning Commission. He noted that the positions of Commissioners Warnke, Brookshire, Koehler and Merrill had been renewed.

Mr. Phillips stated that the Board had set a deadline of June 1st for reapplication for the Zipline operation.

**The meeting was adjourned at 9:10 p.m.**